IN THE

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1962.

No. 606.

THE NEW YORK TIMES COMPANY,
Petitioner,

v.

L. B. SULLIVAN,
Respondent.

On Petition for a Writ of Certiorari to the Supreme Court of Alabama.

OBJECTION

To Motion of Tribune Company for Leave to File Brief as Amicus Curiae.

Respondent has withheld consent to applicant's request to file a brief as *amicus curiae* in support of petitioner because applicant has not and cannot set forth "facts or questions of law that have not been, or reasons for believing that they will not adequately be, presented by the parties, and their relevancy to the disposition of the case; ..." Rule 42 (3) of the Rules of this Court.

From the petition for certiorari, this Court is aware that prominent New York and Birmingham law firms and

two Columbia University law professors represent petitioner. Applicant, The Tribune Company, does not set forth its feeling that petitioner's numerous lawyers will not adequately present facts or questions of law relevant to the disposition of the case.

On the contrary, applicant's motion and attached affidavit show quite clearly that applicant will address itself to two questions of law[1] already presented in the petition[2] and that its "facts" will not be confined to those of record. Instead, applicant proposes to comment on matters entirely outside the record of this private litigation. These materials presumably would include other newspaper comments, and some interlocutory proceedings regarding other lawsuits involving different plaintiffs; different defendants; different publishers; different publications; different forums; different attorneys; and different issues.

The motion reveals that applicant will not base its plea for an absolute license to defame public officials on the record in this case. Applicant's motion seeks to transform into a product of crusading news-gathering a document which this record shows to be an admittedly false paid newspaper advertisement which petitioner could not aver to be true; which petitioner could not aver to be protected as fair comment or by privilege; which petitioner would not retract for respondent, although it retracted the same false material for another person admittedly "on a par" with respondent; and which petitioner's lawyer suggested repeatedly at the trial was untrue and would not be believed.[3]

Applicant has already characterized as a reincarnation of the doctrine of seditious libel respondent's suit on such

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[1] Motion, pp. 3-4.

[2] Petition for certiorari, p. 2.

[3] Appendix B to Brief in Opposition (pp. 48-52).

an ad which charged him, as police commissioner, with responsibility for the criminal and rampant "unprecedented wave of terror"[4] which this ad sought to portray falsely.

Instead of addressing itself to these false charges in this paid advertisement, which the Times itself has disclaimed,[5] applicant would recount the irrelevancies contained in the Maxwell ex parte affidavit filed in a totally unrelated lawsuit.

Moreover, applicant will not be concerned, presumably, with a record which shows a general appearance by petitioner—an adequate independent state ground for jurisdiction in Alabama. And applicant, presumably, will attempt to explain that a concept which permits a plaintiff to bring his libel suit in a court in the state in which he lives and where the criminal charges are likely to do him the most harm[6] is a concept "long repudiated."[7]

In short, Mr. Justice Jackson's characterization of an *amicus* brief in **Craig v. Harney**, 331 U. S. 367, 397, fits the one which applicant proposes. It will not "cite a single authority that was not available to counsel for the publisher involved" and will not relate "a single new

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[4] Petition for certiorari, Appendix C, p. 105.

[5] In the Supreme Court of Alabama, the Times literally disavowed the advertisement as its utterance: "The ad was not written by anyone connected with The Times; it was not printed as a report of facts by The Times, nor as an editorial or other expression of the views of The Times" (Reply Brief, p. 12).

[6] *Polizzi v. Cowles Magazines*, 345 U. S. 663, 668, opinion of Mr. Justice Black. And see *Scripto v. Carson*, 362 U. S. 207; *McGee v. International Insurance Company*, 355 U. S. 220; *Travelers Health Assoc. v. Virginia*, 339 U. S. 643; and *International Shoe Company v. Washington*, 326 U. S. 310, which show that effective service of process on petitioner was based on decisions of this Court so explicit as to leave no room for real controversy.

[7] Motion, p. 3.

fact" of record. Instead, it will be a vehicle for a propaganda effort[8] to secure by arguments outside the record an absolute immunity for the defamation of this respondent and others in the future. It will divert the attention of Court and counsel from the record and from the decisive issues on which this case turns, with concomitant burdens on Court and counsel in added time, expense and confusion.[9]

Respondent respectfully requests that this Court deny the motion of applicant to file a brief as *amicus curiae*.

Respectfully submitted,

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R. E. STEINER, III,

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SAM RICE BAKER,

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M. ROLAND NACHMAN, JR.,
Counsel for Respondent.

STEINER, CRUM & BAKER,
CALVIN WHITESELL,
Of Counsel.

I, M. Roland Nachman, Jr., of counsel for respondent, and a member of the bar of this Court, hereby certify that I have mailed copies of the foregoing Objection, air mail, postage prepaid, to Messrs. Kirkland, Ellis, Hodson, Chaf-

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[8] See Wiener, *The Supreme Court's New Rules*, 68 Harvard Law Review 20, 80 (1954).

[9] It is noteworthy that applicant was not sufficiently interested to intervene as *amicus curiae* in the Supreme Court of Alabama.

fetz & Masters, attorneys for the Tribune Company, Tribune Tower, Chicago, Illinois, at their offices at 130 East Randolph Drive, Chicago 1, Illinois, and to Messrs. Lord, Day & Lord, attorneys for petitioner, at their offices at 25 Broadway, New York, New York.

This ... day of April, 1963.

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M. Roland Nachman, Jr.,
Of Counsel for Respondent.